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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 233

NAOMI PETTY, Administratrix of the Estate of
FAYE R. PETTY, Deceased,
Petitioner,

vs.

TENNESSEE-MISSOURI BRIDGE COMMISSION,
a Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

CHARLES W. MILES, III,
W. MORRIS MILES,
Union City, Tennessee,
FRED ROBERTSON,
Tiptonville, Tennessee,
DOUGLAS MACLEOD,
722 Chestnut Street,
St. Louis, Missouri,
Attorneys for Petitioner.

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**TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:**

Naomi Petty, executrix of the estate of Faye R. Petty, deceased, respectfully petitions that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in this case on May 1, 1958.

A. OPINIONS BELOW.

1. The opinion of the District Court will be found in the record printed for use by the Court below (R. 12-14), nine copies of which are filed herewith.

2. The opinion of the Court of Appeals which is reported in F. 2d is appended hereto (Appendix A).

B. JURISDICTION.

The judgment of the Court of Appeals was entered on May 1, 1958 (Appendix B). The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254 (1).

C. QUESTIONS PRESENTED.

1. Whether the judicial power of the United States extends to an action at law under the Merchant Marine Act of 1920, Sec. 33, 46 U. S. Code 688 (Jones Act), by the executor of a deceased seaman (river boatman) against his employer, the Tennessee-Missouri Bridge Commission, a "body corporate and politic" created by interstate compact between the States of Tennessee and Missouri, and sanctioned by Congress—pursuant to Article I, Section 10, cl. 3 of the U. S. Constitution, or whether Federal jurisdiction is absent by virtue of the 11th Amendment to the U. S. Constitution.

2. Whether in this action the Tennessee-Missouri Bridge Commission, empowered by the compact to "sue and be sued", is clothed with the sovereign immunity of the states of Tennessee and Missouri as respects maritime tort actions.

D. STATUTES INVOLVED.

The statutes involved are U. S. Constitution, Article I, Section 8; U. S. Constitution, Article I, Section 10, cl. 3; U. S. Constitution, Article III, Section 2; U. S. Constitution, Amendment XI; Federal Employers Liability Act, 45 U. S. Code 51 *et seq.*; Merchant Marine Act of 1920, Section 33 (Jones Act), Title 46, U. S. Code, Section 688; Public Law 411 of the 81st Congress, Chapter 758, H. R. 6109; 28 U. S. Code 1254 (1); 28 U. S. Code 1331; 28 U. S. Code 1333 (1); Chapters 167 and 168, Public Acts of 1949 of the Tennessee Legislature and Revised Statutes of Missouri, 1949, Sections 234.360 to 234.420 (Same as Tennessee), which are all set out in Appendix C, pp. A15 to A24.

E. STATEMENT OF THE MATTER INVOLVED.

With a few amendments the facts stated in the opinion of the Court of Appeals (Appendix A, *infra*, p. A1) are accepted for the purposes of this petition. The amendments are inserted parenthetically:

Plaintiff-administratrix has appealed from final order dismissing her complaint for damages for wrongful death of her decedent. Plaintiff, as administratrix of the estate of her deceased husband, in her complaint asserted that her deceased husband, while employed as a seaman upon a ferry boat operated by the defendant (as a common carrier charging fares) across the Mississippi River between Tiptonville, Tennessee, and Portageville, Missouri, met his death when trapped in the pilot house of the ferry boat as it sank; as the result of a collision with another boat; that her husband's death was caused by the negligence of the defendant; and that recovery of damages is authorized by the Jones Act, 46 U. S. C. A., § 688.

Defendant filed a motion to dismiss based upon the following grounds:

- "1. Because this action is essentially a suit against the States of Tennessee and Missouri, which cannot be maintained in the Courts of the United States, or any other Courts.
- "2. Because this action is in substance and effect one against the States of Tennessee and Missouri, without consent, over which neither the judicial power of the United States or the States of Tennessee or Missouri extends.
- "3. Because this is a suit against an agency created by the sovereign States of Tennessee and Missouri, approved by an Act of Congress, and suits of this class are not permitted by the Constitution and Laws of the States of Tennessee and Missouri, or either of them, and this defendant is immune and not liable in damages in suits of this class.
- "4. Because this Court has no jurisdiction over the person of this defendant, or the subject matter of this action."

The court in its decision states that the motion may be treated as a motion for summary judgment.

12 The trial court sustained the defendant's motion and dismissed the complaint upon the basis that the suit against the defendant was in effect a suit against the States of Tennessee and Missouri, that the defense of sovereign immunity was available to said States, and that such defense had not been waived * * *.

The pertinent facts relative to the creation and operation of the Bridge Commission may be summarized. The Bridge Commission is a "body corporate and politic." The Commission was created in 1949 pursuant to the General Bridge Act of 1946, 33 U. S. C. A., § 525.533, by joint

action of the legislatures of Tennessee and Missouri (Chapters 167 and 168 of the Public Acts of 1949 of the Tennessee Legislature, and Revised Statutes of Missouri, Sections 234.360-234.420) and by special act of Congress (Public Law 411, 81st Congress, Chapter 758). Congressional approval was required by Article I, Section 10, Clause 3 of the Constitution of the United States, which provides, "No State shall, without the Consent of Congress * * * enter into any Agreement or Compact with another State * * *." The terms of the interstate compact are set out in full in each of the state acts and in the congressional act of approval. (This special act of Congress approving the pact, Public Law 411, 81st Congress, Chapter 758, H. R. 6109, provides as follows:

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, THAT:

The consent of Congress is hereby given to the compact or agreement set forth below, and to each and every term and provision thereof; **PROVIDED,** That any obligations issued and outstanding, including the income derived therefrom, under the terms of a compact or agreement, and any amendments thereto, shall be subject to the tax laws of the United States;*

AND PROVIDED FURTHER, That nothing herein contained shall be construed to affect, impair, or diminish any right, power or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, rail-

*By subsequent administrative action of the Treasury department immunity from Federal income taxes on the interest income from bonds was granted, notwithstanding this Congressional proviso (R. 10).

road, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: **AND PROVIDED FURTHER**, That after the costs of the bridge have been amortized, such bridge shall thereafter be maintained and operated free of tolls.

Then follows the compact between the two states set out in full. See Appendix C, *infra*).

The main function of the Commission is to plan, construct, maintain, and operate an interstate bridge near Caruthersville, Missouri, with authority granted to purchase and operate ferries across the river within 25 miles of the bridge site. (Among the powers conferred upon the Commission are the powers "to contract, to sue and be sued in its own name.")

The jurisdiction of the District Court rests upon Article III, Section 2 of the U. S. Constitution and the enabling portion of the Judicial Code, 28 U. S. Code 1333, 28 U. S. Code 1331, and 46 U. S. Code 688.

The Court of Appeals affirmed the judgment of the District Court on May 1, 1958, and issued its opinion which is appended hereto (Appendix A) and judgment (Appendix B).

F. REASONS FOR ALLOWANCE OF WRIT.

1. The United States Court of Appeals for the Eighth Circuit has decided two important questions of federal law which have not been, but should be settled by this Court, namely:

a. Whether bi-state or multi-state agencies or instrumentalities having a corporate existence, established

by compact under Article I, Section 10, Clause 3 of the Constitution of the United States and which operate vessels on navigable waters of the United States are clothed with the sovereign immunity from suit which the individual states themselves enjoy as respects purely internal affairs.

b. Whether such a joint instrumentality which is engaged in maritime commerce as a common carrier, is subject to Jones Act actions by its seamen employees in United States District Courts.

2. The Court of Appeals for the Eighth Circuit has decided two questions of federal law conflicting in principle with two applicable decisions of this Court, namely;

a. In *Workman v. Mayor of New York*, (1900) 179 U. S. 552, 45 L. Ed. 314, 21 S. Ct. 212, this Court held that a public corporate body (the City of New York) which had "general capacity to stand in judgment", being "subject to suit and amenable to process" was liable for the commission of maritime torts, notwithstanding a local rule of law extending sovereign immunity from tort actions to municipal corporations for torts committed while performing a governmental function. In the instant case, the Court of Appeals for the Eighth Circuit decided that the respondent commission, a "body corporate and politic", was, notwithstanding the power conferred upon it "to sue and be sued in its own name", clothed with sovereign immunity from an action based upon a maritime tort.

b. In *United States v. California*, (1936) 297 U. S. 175, 80 L. Ed. 567, 56 S. Ct. 421, this Court held that the State of California, in operating a railroad in interstate commerce, was subject to the Safety Appliance Acts (45) U. S. Code 1, et seq., in the same manner as though the railroad were privately owned and operated, whereas the Court of Appeals of the Eighth Circuit in the instant

case holds that the Jones Act, which is the maritime equivalent of the Federal Employers Liability Act (companion legislation to the Safety Appliance Acts); has no application to a bi-state instrumentality, a "body corporate and politic", although operating in interstate commerce and on navigable waters of the United States.

ARGUMENT.

I.

Is This a Suit Against the States Themselves?

Much confusion has been engendered by an apparent conflict between *Workman* and *In re State of New York et al.*, (1920) 256 U. S. 490, 41 S. Ct. 588. The two cases are distinguishable on their facts, since *Workman* involved a municipal corporation and *State of New York* involved the state. Subsequent decisions of lower courts, however, including the instant decision by the Court of Appeals of the Eighth Circuit, have found the two decisions in conflict and this conflict, whether real or merely apparent, should be resolved by this Court once and for all, in order to provide a guide for the future. *State of New York* is heavily relied upon by the Court of Appeals for its decision in the instant case.

If *Workman v. Mayor of New York*, *supra*, is the law, the instant case would seem to be capable of resolution within its framework, since the action was brought, not against the States of Missouri and Tennessee or either of them, but against the Commission, "a body corporate and politic", which by the terms of the compact creating it has power to sue and be sued, in contract, at the very least, according even to the local law of Tennessee and Missouri, if the construction of their courts be placed upon the

language in question. Being in court, and "having capacity to stand in judgment", in the same manner as the City of New York in *Workman* the Commission should not be permitted to assert the local rules of Tennessee and Missouri which grant immunity to municipal corporations and special purpose bodies for torts committed while engaged in a governmental function.

Indeed, the instant case is much stronger than *Workman*. The vessel there was a fire-boat and the "governmental" character of its operation was clear. Here we have a ferry which serves the members of the public at large and charges fares, a commercial operation producing revenue, and this is true despite the fact that in the long run, overall sense, the Commission was established as a self-liquidating, non-profit venture.

The leading text on maritime law regards *Workman* as valid. Benedict on Admiralty (6th Ed.), Volume I, pp. 481-482.

In resolving the question of whether the instant proceeding is a suit against the State, it is not, however, necessary to rely upon the *Workman* case. The question of whether a suit to which the State is not a party to the record is, in essence, a suit against the State, has frequently been passed upon by this Court, but never in the form in which it is here presented. Previous decisions of this Court have dealt in the main with suits against state boards or departments and/or individual state officers or purported officers. *Ford Motor Company v. Department of Treasury of the State of Indiana et al.*, 323 U. S. 459, 464-6, 65 S. Ct. 347, is a recent decision of this Court reviewing earlier decisions. *Ford* involved litigation against a state department and individual state officers. This Court held that since the State of Indiana was called upon

to respond financially to the judgment sought, the suit was in essence against the State. On page 464 of the opinion, this Court speaking through Justice Reed said:

"* * * We have previously held that the nature of a suit as one against the state is to be determined by the essential nature and effect of the proceeding. *Ex parte Ayers*, 123 U. S. 433, 490, 499, 8 S. Ct. 164, 174, 175, 31 L. Ed. 216; *Ex parte State of New York*, 256 U. S. 490, 500, 41 S. Ct. 588, 590, 65 L. Ed. 1057; *Worcester County Trust Company v. Riley*, 302 U. S. 292, 296, 298, 58 S. Ct. 185, 186, 187, 82 L. Ed. 268. And when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants. *Smith v. Reeves*, *supra*; *Great Northern Life Insurance Company v. Read*, *supra*. We are of the opinion, therefore, that the present proceeding was brought in reliance on Section 64-2614 (a) and is a suit against the state."

State of New York, *supra*, relied upon so heavily by the Court below, another case which dealt with a suit against state officers, also recognized the significance of the liability of the state to make satisfaction of any judgment recovered.

In the instant case the opinion of the district judge (R. 13-14) states that a judgment against the Commission "would operate to affect directly the two sovereigns * * * and if a judgment were rendered against the defendant in this case, the two states and the Federal Government would be responsible. The operation of the defendant is governmental in nature". The Court of Appeals' opinion does not go this far and indeed there is nothing elsewhere in the record to warrant such a conclusion. The latter opinion (Appendix A 1, p. A1) (opinion page 6) states:

"It is apparent that a judgment against the Commission would adversely affect the participating states in the performance of their duty of providing a means of crossing the river", which of course is something quite different from a direct pecuniary liability on the part of the states and the Federal Government to satisfy a judgment.

Here the record is barren as respects any pecuniary responsibility of the states to satisfy a judgment, other than the gratuitous remarks of the district judge. The compact nowhere provides for payment by the states of judgments against the Commission. The states, although certainly "interested" in this litigation; to date have not seen fit to enter it, even by way of providing funds or defense counsel from their respective Attorney General departments. Neither state has participated even to the extent of becoming an *amicus curiae*.

Pecuniary responsibility for the judgment is indeed an essential element of a finding that a state is a real party in interest in litigation and it is submitted that in the instant case, this element is entirely lacking.

The record provides no basis for concluding that the instant proceeding is in essence a suit against the States of Missouri and Tennessee or either of them.

II.

Waiver of Sovereign Immunity and Subordination to Federal Power.

Even though in a particular case the court determines that the suit is, in effect, one against a state, it still remains to be determined whether the state has waived its sovereign immunity and the protection afforded that immunity by the Eighteenth Amendment of the Constitution. *Ford Motor*

Company v. Department of Treasury of the State of Indiana et al., 325 U. S. 459, 464-465, 65 S. Ct. 347.

When a state engages in interstate commerce it subordinates itself to the commerce power of the United States set out in the Constitution, Article I, Section 8, and statutes enacted thereunder, including the Safety Appliance Acts, 45 U. S. Code *et seq.*, *U. S. v. California*, (1936) 297 U. S. 175, 80 L. Ed. 567, S. Ct. 421.

U. S. v. California was a proceeding by the Federal government to enforce the penalty provisions of the Safety Appliance Acts against the State of California, which owned and operated a terminal railroad which serviced dock areas in San Francisco Harbor. Upon a finding that this railroad was engaged in interstate commerce this court held that by engaging in such activity California had subordinated itself to the commerce power and statutes enacted thereunder, including the Safety Appliance Acts.

This Court stated (page 185 of 297 U. S. Reports):

"California, by engaging in interstate commerce by rail, has subjected itself to the commerce power, and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state-owned railroads because it does not specifically mention them. The Federal Safety Appliance Act is remedial, to protect employees and the public from injury because of defective railway appliances, *Swinson v. Chicago, St. Paul M. & O. Ry. Co.*, 294 U. S. 529, 55 S. Ct. 517, 79 L. Ed. 1041, 96 A. L. R. 1136, *Fairport, P. & E. R. Co. v. Meredith*, 292 U. S. 589, 594, 54 S. Ct. 826, 78 L. Ed. 1446, *Johnson v. Southern Pacific Co.*, 196 U. S. 1, 17, 25 S. Ct. 158, 49 L. Ed. 363, and to safeguard interstate commerce itself from obstruction and injury due to defective appliances upon locomotives and cars used on the highways of interstate commerce, even though their individual

use is wholly intrastate. *Southern Ry. Co. v. United States*, 222 U. S. 20, 32 S. Ct. 2, 56 L. Ed. 72; *Moore v. Chesapeake & Ohio Ry. Co.*, 291 U. S. 205, 214, 54 S. Ct. 402, 78 L. Ed. 755. The danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state-owned or privately-owned. No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the act whenever a state, as well as a privately-owned carrier, brings itself within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection."

It will be noted that as in the instant case, the railroad charged for its services, but in the overall sense was a non-profit enterprise, using the revenues for harbor improvement. This court (1. c. 183-4), as in the *Workman* case, rejected the distinction sought to be made between "governmental" and proprietary capacities. This distinction figures largely in the opinion of the Court of Appeals (Appendix A, p. A1).

In a subsequent action at law in the California state court by an injured employee of the same railroad under the Federal Employer's Liability Act, 45 U. S. Code 51 et seq., the appellate court held, specifically following *U. S. v. California*, that California had surrendered its sovereign immunity from suit by a private citizen under the Federal Employer's Liability Act, having subordinated itself to that law as well as the Safety Appliance Acts. *Maurice v. State*, (1941) 43 Cal. 270, 110 P. 2d 706.

The same rule has obtained with respect to the Railway Labor Act, 45 U. S. Code 151, et seq., *New Orleans Public Belt Railroad Commission v. Ward*, C. A. 5 (1952), 195 F. 2d 829, *Taylor v. Fee*, C. A. 9 (1956), 233 F. 2d 251,

256. The latter case cites with approval *Maurice v. State*, *supra*.

The Jones Act, which is involved in the instant case, derives from both the commerce power and the power over matters maritime, Article III, Section 2, Constitution of the United States. *O'Donnell v. Great Lakes Dredge and Dock Company*, 318 U. S. 36, 39, 87 L. Ed. 596, 63 S. Ct. 488. It is remedial legislation, designed to protect employees from, and compensate them in the event of, injuries, and is construed liberally in favor of injured seamen. *Garrett v. Moore McCormack*, 317 U. S. 239, 63 S. Ct. 246; *O'Donnell v. Great Lakes Dredge & Dock Company*, *supra*; *Socony-Vacuum Company v. Smith*, 305 U. S. 424, 59 S. Ct. 252; *Panama Railroad Company v. Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748:

In determining whether or not the States of Missouri and Tennessee have waived sovereign immunity from maritime tort actions against the Commission, it is at the outset necessary to construe the language of the compact. The Commission is given the powers, among others "to contract, to sue and be sued in its own name." This language, frequently employed in setting up public bodies, has received a variety of constructions in the courts. The Courts of both Missouri and Tennessee, in respect to purely internal matters have adopted the narrow view, construing such language as permitting suit in contract but not in tort.

It must be borne in mind, however, that here we are dealing not with a state in respect to its own internal affairs but with two states which have entered into a compact which, under Article I, Section 10, clause 3 of the Constitution of the United States, was required to be sanctioned by the Congress of the United States. We are thus

dealing with not merely the construction that the courts of one state place upon given statutory language, but the courts of both states.⁹ As it happens here the courts of the two states agree, but what if they did not? What if one state to the compact followed the broad rule of construction and permitted suit in tort as well?

A compact between two or more states, created under Article I, Section 10, clause 3 of the United States Constitution requiring the sanction of Congress is a "federal title right, privilege or immunity", sufficient to confer jurisdiction upon the Courts of the United States under Section 1331 of the Judicial Code (28 U. S. Code 1331).

Delaware River Joint Toll Bridge Commission v. Colburn, 310 U. S. 419, 427, 60 S. Ct. 1039, 84 L. Ed. 1287.

This Court, in an early decision involving the construction of an interstate compact laid down the rule that no reference should be made to the decisions of the courts of the states (which are parties) respecting their own local rules of construction, since the construction of the compact is a matter of international law, in which local rules have no application. *Marlatt's Lessee v. Silk et al.*, 36 U. S. 1, 20, 11 Peters 20, 9 L. Ed. 609, 617.

Where the right of a seaman to sue his employer is at issue The Federal Courts apply a liberal rule of construction favoring the seaman. *Canadian Aviator, Ltd., v. U. S.*, 324 U. S. 215, 65 S. Ct. 639, 89 L. Ed. 901; *American Stevedores v. Porello*, 330 U. S. 446, 67 S. Ct. 847, 91 L. Ed. 1011.

The language of the compact in the light of the foregoing should be construed to mean what it says and the tortured construction which permits suit in contract but not in tort should not be applied.

There is in the instant case, however, another and overriding consideration in determining whether or not the States of Missouri and Tennessee have waived for themselves and the Commission any sovereign immunity respecting maritime torts committed by the Commission. In order for the compact to be valid, Congress had to assent, and the intent of Congress is therefore also involved in the Construction of the language.

In this connection the intent of Congress has been made abundantly clear in the consent statute, Public Law 411, 81st Congress, Chapter 758, which provides specifically: "that nothing contained herein shall be construed to affect, impair or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof." It is clear that Congress was insisting that Tennessee, Missouri and the Commission subordinate themselves to existing (and future) laws enacted under the commerce and maritime powers, including the Jones Act and its liberal interpretation by the courts of the United States as remedial legislation, *Garrett v. Moore McCormack, supra*; *O'Donnell v. Great Lakes Dredge & Dock Company, supra*; *Socony-Vacuum Company v. Smith, supra*; *Panama Railroad Company v. Johnson, supra*, especially in view of the projected ferry operations of the Commission.

It is also reasonable to conclude that Congress, in giving its consent to the compact, by its reference to the courts of the United States, imposed the condition that

controversies involving the Commission should be subject to the jurisdiction of Federal Courts insofar as such courts possess jurisdiction over the subject matter generally. The instant case, which involves navigable waters and interstate commerce is certainly the type of situation Congress must have had in mind.

The record is clear that the States of Tennessee and Missouri, which were required to submit the compact for Congressional approval, accepted the conditions of this approval, and though later the Commission was able to obtain administrative relief from the tax proviso of the consent statute, it did not obtain, and could not have obtained relief from the other conditions imposed by Congress.

In *United States v. California* there was no question of a submission or subordination to Federal powers by virtue of language in an act of Congress. This Court found the subordination in the mere act of operating a railroad in interstate commerce. In the instant case, not only has the Commission engaged in interstate commerce in operating as a common carrier between the States of Tennessee and Missouri over the navigable waters of the Mississippi River, but in addition thereto, the states in question have clearly submitted to the power of the Federal Government and its courts in dealing with interstate commerce and matters maritime, and subordinated themselves by virtue of the terms upon which they obtained the consent of Congress for their compact. There is thus a double subordination and a double waiver of any sovereign immunity from suit in the instant case.

The court below distinguished *United States v. California* on the basis that since it was not a suit by an individual citizen of another state, the 11th Amendment did not apply. The principal point of the *California* case,

however, is its holding that a state by engaging in interstate commerce subordinates itself to the commerce power of the United States and places itself in the same position as a private citizen so engaged. The record in the instant case clearly demonstrates a waiver within the principle enunciated in the *California* case and the decision of the Court of Appeals is therefore in conflict with that case. It is clear from the *Ford* case, *supra*, and the authorities therein cited that the inhibition of the 11th Amendment may be waived by the state (or states) in question. Here this waiver is obvious in the full sense of the *California* case and in addition there is the acceptance by the states and the Commission of the conditions imposed by Congress in the consent statute. The conflict between the decision of the court below and *United States v. California* is clear despite the fact that an additional waiver or submission to Federal authority has taken place.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

CHARLES W. MILES, III,
W. MORRIS MILES,

Union City, Tennessee,

FRED ROBERTSON,

Tiptonville, Tennessee,

DOUGLAS MACLEOD,

722 Chestnut Street,
St. Louis, Missouri,

Attorneys for Petitioner.

APPENDIX "A".

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15,878

Naomi Petty, Administratrix of
the Estate of Faye R. Petty,
Deceased,

Appellant,

v.

Tennessee-Missouri Bridge Com-
mission, a Corporation,

Appellee.

} Appeal from the
United States Dis-
trict Court for the
Eastern District
of Missouri.

[May 1, 1958.]

Douglas MacLeod (Fred Robertson and Miles & Miles
were with him on the brief) for Appellant.

James M. Reeves (Ward & Reeves was with him on the
brief) for Appellee.

Before GARDNER, Chief Judge, and JOHNSON and VAN
OOSTERHOUT, Circuit Judges.

VAN OOSTERHOUT, Circuit Judge.

Plaintiff-administratrix has appealed from final order dismissing her complaint for damages for wrongful death of her decedent. Plaintiff, as administratrix of the estate of her deceased husband, in her complaint asserted that her deceased husband, while employed as a seaman upon a ferry boat operated by the defendant across the Mississippi River between Tiptonville, Tennessee, and Portageville, Missouri, met his death when trapped in the pilot house of the ferry boat as it sank, as the result of a collision with another boat; that her husband's death was caused by the negligence of the defendant; and that recovery of damages is authorized by the Jones Act, 46 U.S.C.A., § 688.

Defendant filed a motion to dismiss based upon the following grounds:

"1—Because this action is essentially a suit against the States of Tennessee and Missouri, which cannot be maintained in the Courts of the United States, or any other Courts.

"2—Because this action is in substance and effect one against the States of Tennessee and Missouri, without consent, over which neither the judicial power of the United States or the States of Tennessee or Missouri extends.

"3—Because this is a suit against an agency created by the sovereign States of Tennessee and Missouri, approved by an Act of Congress, and suits of this class are not permitted by the Constitution and Laws of the States of Tennessee and Missouri, or either of them, and this defendant is immune and not liable in damages in suits of this class.

"4—Because this Court has no jurisdiction over the person of this defendant, or the subject matter of this action."

The court in its decision states that the motion may be treated as a motion for summary judgment.

The trial court sustained the defendant's motion and dismissed the complaint upon the basis that the suit against the defendant was in effect a suit against the States of Tennessee and Missouri, that the defense of sovereign immunity was available to said States, and that such defense had not been waived. The appeal challenges the validity of this determination.

Plaintiff in her brief states that defendant's claim of sovereign immunity must be denied for each of the following reasons: (1) defendant is a separate entity from the States of Tennessee and Missouri; (2) the States have waived sovereign immunity; (3) the States, by empowering the Commission to engage in maritime commerce and interstate commerce, "subordinated themselves and it to the Federal Government's power to regulate interstate commerce and its power over matters maritime, and all laws enacted to implement these powers, including the Jones Act."

The pertinent facts relative to the creation and operation of the Bridge Commission may be summarized. The Bridge Commission is a "body corporate and politic." The Commission was created in 1949 pursuant to the General Bridge Act of 1946, 33 U.S.C.A., §§ 525-533, by joint action of the legislatures of Tennessee and Missouri (Chapters 167 and 168 of the Public Acts of 1949 of the Tennessee Legislature, and Revised Statutes of Missouri, Sections 234.360-234.420) and by special act of Congress (Public Law 411, 81st Congress, Chapter 758). Congressional approval was required by Article I, Section 10, Clause 3 of the Constitution of the United States, which provides, "No State shall, without the Consent of Con-

gress * * * enter into any Agreement or Compact with another State * * *." The terms of the interstate compact are set out in full in each of the state acts and in the congressional act of approval. The main function of the Commission is to plan, construct, maintain, and operate an interstate bridge near Caruthersville, Missouri, with authority granted to purchase and operate ferries across the river within 25 miles of the bridge site.

We now consider the question of whether the Commission is an entity separate and apart from the States of Tennessee and Missouri.

In *Ford Motor Co. v. Department of Treasury of Indiana*, 323 U.S. 459, the action was brought against various state officials who constituted the Department of Treasury. The action was dismissed on the basis of sovereign immunity. The Court, in support of its determination that the suit was one against the state, says (p. 464):

"* * * We have previously held that the nature of a suit as one against the state is to be determined by the essential nature and effect of the proceeding. * * * And when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants. * * *"

In *Kansas City Bridge Co. v. Alabama State Bridge Corp.*, 5 Cir., 59 F.2d 48, the action against the bridge company was held to be one against the state, the court stating (pp. 49-50):

"It is clear that the whole purpose of the act was to erect bridges essential to the highway system, to pay for them with tolls, and then to make them free for the use of the public. It is well settled that the construction of public roads and bridges is a government-

tal function. * * * The state may either perform this function in its own name or through its public officers or one of its governmental agencies. * * * The Alabama Bridge Corporation was but an agency or instrumentality through which the state acted in causing its public bridges to be constructed. It was not a private corporation in any sense of the word, but state officials, who might as well have been designated a board or commission, were *ex officio* members, and the only members, of it. * * * In the nature of things the state had to choose some such agency in order to effectuate its purpose. * * *

In *Cargile v. New York Trust Co.*, 8 Cir., 67 F.2d 585, the plaintiff brought an action against the members of the Highway Commission of the State of Arkansas, seeking to have a receiver appointed to take charge of a toll bridge. The action was held to be in effect an action against the State of Arkansas and was dismissed for want of jurisdiction. *Copper S. S. Co. v. State of Michigan*, 6 Cir., 194 F.2d 465, involved a suit for damages caused by a ferry boat operated across the Mackinac Straits by the State Highway Department. The action was held to be one against the state and was dismissed.

In our present case, it is apparent that the purpose of the States in entering into the compact and in carrying out the authorized activity was to perform their respective governmental obligations to furnish the public with necessary highways and bridges. The defendant Commission was the agency or instrument of the two States and not an entity separate and apart from the States. The Commission could issue no stock. It was controlled by state officials appointed by the respective governors with senate confirmation. Commission action could be authorized only upon a majority vote of the commissioners from each State. Veto power was reserved to the governors. The

Commission's authorized bonds were granted exemption from income taxation. Its revenue from tolls could only be used for reasonable operating expenses and for payment of its bonds and interest, and when the indebtedness was paid the bridge was to belong to the two States and to be operated free of tolls. The Commission afforded no opportunity for realization of private profits to anyone. It had no right to levy taxes. Its tolls were pledged exclusively for operating expenses and bond payments. Aside from the tolls, its only sources of money were the creating States and the Federal Government. It is apparent that a judgment against the Commission and a seizure of the ferry would adversely affect the participating States in the performance of their duty of providing a means of crossing the river.

Plaintiff urges that inasmuch as defendant is a creature of two States, it must be a separate entity. We see no insuperable obstacle to several states using the same instrumentality to carry out a common governmental obligation. As heretofore pointed out, the Constitution of the United States specifically provides for congressional approval of compacts between states. The approval of the compact by Congress at least lends support to the propriety of the States carrying out the project here involved jointly.

Justice Frankfurter and Dean Landis, in an article in 34 Yale Law Journal 685, discuss the compact clause of the Constitution, and in an appendix set out many instances in which compacts have been utilized. The effectiveness of the compact in solving many interstate problems is pointed out. The Port of New York Authority is an example of an interstate compact. This authority was created by New York and New Jersey with the approval of Congress. It performs harbor duties and provides

bridges and tunnels connecting the two States. In *Howell v. Port of New York Authority*, D.C. N.J., 34 F.Supp. 797, the compact creating the Authority was discussed. In dismissing the action, the court states (p. 801):

"The Port Authority, a bi-state corporation * * * is a joint or common agency of the states of New York and New Jersey. It performs governmental functions which project beyond state lines, and it is immune from suit without its consent. * * *"

To the same effect see *Rao v. Port of New York Authority*, E.D. N.Y., 122 F.Supp. 595, affd. 2d Cir., 222 F.2d 362.

We are satisfied that the defendant Commission is an instrumentality of both Tennessee and Missouri, and that it is not an entity separate and distinct from the States.

Plaintiff next contends that the States have waived any immunity they might have because of the provision contained in the compact reading as follows:

"[The Commission] shall have the following powers and duties:

* * *

"3. To contract, to sue and be sued in its own name; to purchase or otherwise acquire, hold and dispose of real and personal property * * *"

Some support for plaintiff's contention that there is a tendency to give statutes authorizing suits a liberal construction is found in cases involving corporations created by the Federal Government and in Tort Claims Act suits. However, no such tendency is apparent in cases involving the waiver of sovereign immunity on the part of states. *Porto Rico v. Rosaly*, 227 U.S. 270; *Great Northern Life Ins. Co. v. Read*, 322 U. S. 47; *Ford Motor Co. v. Department of Treasury of Indiana*, *supra*; *Copper S. S. Co. v.*

State of Michigan, supra; Pacific Fruit & Produce Co. v. Oregon Liquor Control Commission, D. C. Ore., 41 F. Supp. 175.

In *Porto Rico v. Rosaly, supra*, the issue was whether the sovereign immunity defense was available to Porto Rico. It was contended that the power granted Porto Rico to sue and be sued deprived it of such immunity. The Court conceded that such words standing alone could be so construed, but stated that when they are considered in context they could not be interpreted in such a way as to deprive Porto Rico of such a vital right as sovereign immunity. In the *Read* case, *supra*, the state had authorized suit to recover taxes illegally collected. The statute was construed to limit the waiver to suits in the state court. The Court states (pp. 53-54):

"The principle of immunity from litigation assures the states and the nation from unanticipated intervention in the processes of government, while its rigors are mitigated by a sense of justice which has continually expanded by consent the suability of the sovereign. The history of sovereign immunity and the practical necessity of unfettered freedom for government from crippling interferences require a restriction of suability to the terms of the consent, as to persons, courts and procedures. * * *

The Supreme Court has stated that administrative constructions by a state of its statutes of consent influence its conclusions. *Great Northern Life Ins. Co. v. Read, supra; Ford Motor Co. v. Department of Treasury of Indiana, supra.*

The Supreme Court of Missouri in *Todd v. Curators of University of Missouri, Mo. _____, 147 S.W.2d 1063, 1064*, states:

"A statutory provision that such a public corporation 'may sue and be sued' does not authorize a suit against it for negligence. * * * But the waiver by the state for itself or its officers or agents of immunity from an action is one thing. Waiver of immunity from liability for the torts of the officers or agents of the state is quite another thing." *Bush v. Highway Commission*, 329 Mo. 843, loc. cit. 849, 46 S.W.2d 854, loc. cit. 856. * * *

In Tennessee, statutes permitting suits against the State are strictly construed. *State v. Cook*, ____ Tenn. ____, 106 S.W.2d 858; *Hill v. Beeler*, ____ Tenn. ____, 286 S.W.2d 868.

An application of the law above stated to the undisputed facts before us leads us to the conclusion that the language used in the compact, when considered in context, can not be construed to constitute a waiver of sovereign immunity as to tort liability by the States of Tennessee and Missouri. The words "to sue and be sued" immediately follow the words "to contract." There is no express waiver of tort liability, nor can such a waiver be fairly implied. It is reasonable to assume that the drafters of the compact had in mind the interpretation of their courts to the effect that the grant of a right to sue and be sued did not include a waiver of immunity as to tort liability.

We have determined that the suit was in effect a suit against the States of Tennessee and Missouri, and that neither of said States has waived its sovereign immunity as to tort liability. Under such circumstances, the trial court and this court are without jurisdiction to entertain this action.

Defendant's motion asserts that the action is in effect an action against the States, and that the court has no jurisdiction over the defendant or the subject matter of

the action. While the bar of the Eleventh Amendment to the Constitution of the United States is not specifically asserted, we are inclined to think that the Court's jurisdiction was sufficiently challenged. In any event, we believe that we are obligated to determine whether the Eleventh Amendment deprives this court of jurisdiction.

In *Ford Motor Co. v. Department of Treasury of Indiana, supra*, the Supreme Court states (p. 467):

"* * * The Eleventh Amendment declares a policy and sets forth an explicit limitation on federal judicial power of such compelling force that this Court will consider the issue arising under this Amendment in this case even though urged for the first time in this Court."

The Eleventh Amendment provides:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of any Foreign State."

It has uniformly been held that federal judicial power does not extend to any suit in law or equity against a state by citizens of another state even in cases arising under the Constitution or laws of the United States. *Missouri v. Fiske*, 290 U.S. 18; *Great Northern Life Ins. Co. v. Read, supra*; *Cargile v. New York Trust Co., supra*. In the case last cited this court applies the rule above stated and cites many cases supporting it.

The complaint shows the plaintiff to be a resident of Tennessee. The authorities just cited would bar a tort action against Missouri. The Amendment does not by its terms bar a citizen from suing his own state. However, the Supreme Court has squarely held that a state can not

be sued without its consent in a federal court by one of its own citizens. *Hans v. Louisiana*, 134 U.S. 1. In *Georgia Railroad & Banking Co. v. Redwine*, 342 U.S. 299, 304, footnote 13, the decision in *Hans v. Louisiana* is recognized as properly stating the law.

Plaintiff contends that jurisdiction exists because of Article III, Section 2 of the Constitution of the United States providing that judicial power shall extend to all cases in admiralty and maritime jurisdiction. This is the same section of the Constitution which confers jurisdiction over cases arising under the Constitution and laws of the United States. The Court, in the cases heretofore cited, has held that the provision granting jurisdiction over cases arising under the laws of the United States does not give a federal court jurisdiction in a suit by a citizen against a state, and no reason is apparent why the portion of the same section of the Constitution granting admiralty jurisdiction should receive any different treatment.

In *Ex parte State of New York*, No. 1, 256 U.S. 490, the Court held that a state could not be sued in admiralty for maritime tort without its consent. The Court fully discusses the reasons for upholding state immunity, and distinguishes *Workman v. New York City*, 179 U.S. 552, relied upon by the plaintiff. Among other things, the Court states (pp. 498, 502-503):

"* * * In *Hans v. Louisiana*, *supra* (p. 15), the court demonstrated the impropriety of construing the Amendment so as to leave it open for citizens to sue their own State in the federal courts; and it seems to us equally clear that it cannot with propriety be construed to leave open a suit against a State in the admiralty jurisdiction by individuals, whether its own citizens or not."

"There is no substance in the contention that this result enables the State of New York to impose its local law upon the admiralty jurisdiction, to the detriment of the characteristic symmetry and uniformity of the rules of maritime law insisted upon in *Workman v. New York City*, 179 U.S. 552, 557-560; * * * The symmetry and harmony maintained in those cases consists in the uniform operation and effect of the characteristic principles and rules of the maritime law as a body of substantive law operative alike upon all who are subject to the jurisdiction of the admiralty, and binding upon other courts as well. * * * It is not inconsistent in principle to accord to the States, which enjoy the prerogatives of sovereignty to the extent of being exempt from litigation at the suit of individuals in all other judicial tribunals, a like exemption in the courts of admiralty and maritime jurisdiction."

In *Ex parte State of New York*, No. 2, 256 U.S. 503, it was held that a ship owned by New York and used for governmental purposes could not be seized by admiralty process in rem in an action for damages caused by the negligent operation of the ship.

Plaintiff contends that the States are subject to federal laws regulating interstate commerce and maritime matters, and that the Jones Act was enacted pursuant to such powers.

We find nothing in the Jones Act which shows any congressional intention to make its provisions applicable when either the State or Federal Government is the employer. In the comment found in Cumulative Supplement, 46 U.S.C.A. 57, '61, it is stated that the Jones Act applies only to vessels of private ownership or operation. The Federal Government has power to regulate interstate commerce and maritime activities. However, such power is not broad enough to authorize any federal legislation

which would impair the constitutional immunity granted states from suits by citizens against such states in federal courts. If the Jones Act were construed to impose tort liability upon states for injuries to its seaman employees, there is grave danger that such a provision would conflict with the Eleventh Amendment. Ambiguous statutes are generally construed in such a way as to preserve their constitutionality.

United States v. California, 297 U.S. 175, relied upon by the plaintiff, is not in conflict with the result we reach. The action in that case was brought by the United States and not by an individual, and hence no conflict with the Eleventh Amendment arises in that case.

We conclude that the trial court, by reason of the provisions of the Constitution, and particularly the Eleventh Amendment, had no jurisdiction of this suit, brought in effect against the States of Tennessee and Missouri. The trial court properly dismissed the action for want of jurisdiction.

Affirmed.

A true copy.

Attest:

Robert C. Tucker,

(Seal) Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX "B".
(Judgment.)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15878 - - - September Term, 1957.
Thursday, May 1, 1958.

Naomi Petty, Administratrix of the Estate
of Faye R. Petty, Deceased, Appellant,
vs.

Tennessee-Missouri Bridge Commission,
a Corporation.

Appeal from the United States District Court
for the Eastern District of Missouri.

This cause came on to be heard on the record from the
United States District Court for the Eastern District of
Missouri, and was argued by counsel.

On Consideration Whereof, It is now here Ordered
and Adjudged by this Court, that the judgment of the
said District Court, in this cause, be, and the same is
hereby, affirmed.

May 1st, 1958.

APPENDIX "C".

U. S. Constitution, Article I, Section 8:

The Congress shall have Power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

U. S. Constitution, Article I, Section 10, cl. 3:

No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State, or with a foreign Power.

U. S. Constitution, Article III, Section 2:

The judicial Power shall extend * * * to all cases of admiralty and maritime jurisdiction.

U. S. Constitution, Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Federal Employers Liability Act, 45 U. S. Code 51 et seq.

Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the

States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. April 22, 1908, c. 149, § 1, 35 Stat. 65; August 11, 1939, c. 658, § 1, 53 Stat. 1404.

Merchant Marine Act of 1920, Section 33 (Jones Act), Title 46, U. S. Code, Section 688:

Recovery for injury to or death of seaman.

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal

injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. March 4, 1915, c. 153, Sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007.

Public Law 411 of the 81st Congress, Chapter 758, H. R. 6109.

**Tennessee-Missouri Bridge Commission Compact—
Consent, Chapter 758—Public Law 411.**

(An Act granting the consent of Congress to a compact or agreement between the State of Tennessee and the State of Missouri concerning a Tennessee-Missouri Bridge Commission, and for other purposes.)

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, THAT:

The consent of Congress is hereby given to the compact or agreement set forth below, and to each and every term and provision thereof: **PROVIDED**, That any obligations issued and outstanding, including the income derived therefrom, under the terms of a compact or agreement, and any amendments thereto, shall be subject to the tax laws of the United States; **AND PROVIDED FURTHER**, That nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any

commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: **AND PROVIDED FURTHER**, That after the costs of the bridge have been amortized, such bridge shall thereafter be maintained and operated free of tolls:

Sec. 234.360.* Compact between Tennessee and Missouri—powers and duties of Tennessee-Missouri Bridge Commission.

Within sixty days after this act becomes effective, the governor, by and with the advice and consent of the senate, shall appoint three commissioners to enter into a compact on behalf of the state of Missouri with the state of Tennessee. If the senate is not in session at the time for making such appointments, the governor shall make temporary appointments as in the case of a vacancy. Any two of the commissioners so appointed together with the attorney general of the state of Missouri may act to enter into the following compact:

**Compact Between Tennessee and Missouri Creating
a Tennessee-Missouri Bridge Commission.**

Article I.

There is hereby created a Tennessee-Missouri Bridge Commission (herein-referred to as the commission) which shall be a body corporate and politic and which shall have the following powers and duties:

*This section and subsequent sections bear here the Missouri numbers for convenience in reference. Text of Missouri Statutes identical to Tennessee statutes as well as this Act of Congress.

1. To plan, construct, maintain and operate a bridge and approaches thereto across the Mississippi river at or near Caruthersville, Missouri, at a point deemed by the commission as most suitable to the interests of the citizens of the state of Tennessee and Missouri in accordance with the provisions of an act of the Seventy-ninth Congress, second session, of the United States entitled "The General Bridge Act of 1946", 33 U.S.C.A. 525-533,

2. To purchase, maintain and, in its discretion, to operate all or any ferries across the Mississippi river within twenty-five miles of the site selected for the bridge;

3. To contract, to sue and be sued in its own name; to purchase or otherwise acquire, hold and dispose of real and personal property;

4. To acquire by proper condemnation proceedings such real property as may be necessary for the construction and operation of the bridge and the approaches thereto;

5. To issue bonds on the security of the revenues derived from the operation of the bridge and ferries for the payment of the cost of the bridge, its approaches, ferry or ferries, and the necessary lands, easements and appurtenances thereto including interest during construction and all necessary engineering, legal, architectural, traffic surveying and other necessary expenses. Such bonds shall be the negotiable bonds of the commission, the income of which shall be tax-free. The principal and interest of the bonds, and any premiums to be paid for their retirement before maturity, shall be paid solely from the revenues derived from the bridge and ferries;

6. To establish and charge tolls for transit over such bridge and ferries in accordance with the provisions of this compact;

7. To perform all other necessary and incidental functions.

Article II.

The rates of tolls to be charged for transit over such bridge and ferries shall be so adjusted as to provide a fund sufficient to pay for the reasonable cost of maintenance, repairs and operation (including the approaches to the bridge) under economical management, and also to provide a sinking fund sufficient to pay the principal and interest of the outstanding bonds. All tolls and other revenues derived from facilities of the commission are hereby pledged to such uses.

Article III.

The commission shall keep an accurate record of the cost of the bridge and of other expenses and of the daily revenues collected and shall report annually to the governor of each state setting forth in detail the operations and transactions conducted by it pursuant to this agreement and any legislation thereunder.

Article IV.

When the bonds have been retired, the part of the bridge within the state of Tennessee shall be conveyed to the state of Tennessee, and that part within the state of Missouri to the state of Missouri, and the high contracting parties to this compact do hereby agree that thereafter the bridge shall be free of tolls and shall be properly maintained, operated and repaired by the two states as may be agreed upon.

Article V.

The commission shall consist of ten members, five of whom shall be qualified electors of the state of Tennessee

and shall reside in Dyer County, or counties adjacent thereto, Tennessee, and five of whom shall be qualified electors of the state of Missouri and shall reside in Pemiscot County, or counties adjacent thereto, Missouri. The Tennessee members are to be chosen by the state of Tennessee, and the Missouri members by the state of Missouri in the manner and for the terms fixed by the legislature of each state, except as herein provided.

Article VI.

1. The commission shall elect from its number a chairman and a vice-chairman and may appoint such officers and employees as it may require for the performance of its duties and shall fix and determine their qualifications and duties.

2. Until otherwise determined by the legislatures of the two states no action of the commission shall be binding unless taken at a meeting at which at least three members from each state are present and unless a majority of the members from each state present at such meeting shall vote in favor thereof.

Each state reserves the right hereafter to provide by law for the exercise of the veto power by the governor thereof over any action of any commissioner appointed therefrom.

Article VII.

The commission is authorized and directed to proceed with the planning and construction of the bridge and the approaches thereto as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers, not inconsistent with the constitution or the laws of the United States or of either state,

to effect the same, except the power to assess or levy taxes.

Article VIII.

In witness thereof, we have hereunto set our hands and seals under authority vested in us by law

(Signed)

(L. 1949, p. 621.)

Sec. 234.370. Commissioners—appointed and qualifications.

Within ninety days after this law becomes effective the governor shall, by and with the advice and consent of the Senate, appoint five commissioners of the Tennessee-Missouri Bridge Commission created by compact between the states of Missouri and Tennessee. If the senate is not in session at the time for making any appointment, the governor shall make a temporary appointment as in the case of a vacancy. All commissioners so appointed shall be qualified voters of the state of Missouri and shall reside within the county of Pemiscot, Missouri, or counties adjacent thereto (L. 1949, p. 625 c/g 1).

Sec. 234.380. Terms of commissioners.

Of the commissioners first appointed one shall be appointed to serve for a term of one year, one for two years, one for three years, one for four years and one for five years. At the expiration of the term of each commissioner and of each succeeding commissioner, the governor shall, by and with the advice and consent of the senate, appoint a successor who shall hold office for a term of five years. Each commissioner shall hold office until his successor has been appointed and qualified (L. 1949, p. 625, c/g 2).

Sec. 234.390. Commission vacancies, how filled.

Vacancies occurring in the office of any commissioner shall be filled by appointment by the governor, by and with the advice and consent of the senate, for the unexpired term. In any case of vacancy, while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office (L. 1949, p. 625 c/g 3).

Sec. 234.400. Commissioners to receive expenses only.

The commissioners shall serve without compensation but shall be entitled to be reimbursed for the necessary expenses incurred in the performance of their duties. (L. 1949, p. 625 c/g 4).

234.410. Commissioners, powers and duties.

The commissioners shall have the powers and duties and be subject to the limitations provided for in the compact entered into between the two states, and together with five commissioners from the state of Tennessee shall form the Tennessee-Missouri Bridge Commission (L. 1949, p. 625 c/g 5).

234.420. Commission to be dissolved, when.

Upon the retirement of all bonds, including the payment of interest and other costs, and upon the conveyance of the bridge to the states of Missouri and Tennessee, the commission shall be dissolved and all its rights, powers and duties under this act and under the compact entered into between the states of Missouri and Tennessee, shall be terminated (L. 1949, p. 625 c/g 6).

(Missouri numbering has been used as a matter of convenience in reference beginning with the first section.

of the compact proper, Revised Statutes of Missouri 1949, Section 234.360. P. L. 411, 81st Congress differs from the Missouri and Tennessee Statutes only in respect to matter preceding this section.)

28 U. S. Code 1254 (1):

Courts of appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U. S. Code 1331:

Federal question; amount in controversy.

The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

28 U. S. Code 1333 (1):

Admiralty, maritime and prize cases.

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to the libellant or petitioner in every case any other remedy to which he is otherwise entitled.